HARPER GILFILLAN (M) SDN. BHD.

v.

YEOH KIAN TEIK & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[CIVIL SUIT NO. 1579 OF 1974]
11 JULY 1991

CONTRACT: *Whether subsidiary company and contractor were agents - Conduct of parties - Terms of contract - Scope of indemnity clause - Whether negligent - Advances to contractor - Whether a loan - Penalty charged - Whether agreed to by parties - Interest - Statutory interest - Discretion of Court.*

The plaintiff agreed pursuant to a contract dated 13 February 1969 to lend to MT & Co. a sum of RM180,000 to enable MT to purchase machinery to extract manganese ore. In consideration thereof MT agreed that all ore mined, if it was of a quality acceptable to the plaintiffs would be sold to or through the plaintiffs at such prices mutually agreed upon. It was also agreed that the loan would be repaid by monthly instalments of RM15,000 or by deductions to be made from the purchase price of the ore sold and it was further agreed that MT would pay interest on the loan. By Clause 2 of the contract MT warranted "that they were fully and legally entailed to all ore from the said mine and to dispose it notwithstanding the interest of the said subsidiary company and of the contractor extracting the ore. The said contract was guaranteed by the 1st to the 5th defendants who were directors of the MT. The 6th defendant was the contractor T who was subsequently replaced by one Teh as the new contractor. Teh was the 4th defendant.

By a letter written to Teh dated 13 December 1969 which the plaintiff alleged was pursuant to the contract with MT set out the terms and conditions pertaining to the quality required of the ore. It was stressed in the letter that any deviations would attract penalties at rates to be mutually agreed. These terms were in respect of sales to Mitsui.

The plaintiffs sent statement of accounts to MT to verify the amounts due. This was the plaintiff's claim against the defendants as guarantors for sums they claim are due from MT being RM180,000 which was the balance due and interest accrued on the sum of RM15,000 which was the advance to Teddy as well as the amounts incurred in respect of penalties paid to Mitsui and also the expenses incurred by way of demurrage.

Held:

[1] The facts of the case indicate that the 4th defendant recognised that the arrangements reflected the contract and further demonstrated beyond any *bona fide* argument that all the steps and actions taken by Teh were on behalf of MT and in performance of the obligations of MT as agreed in the agreement dated 13 December 1969.

[2] By conduct MT had held out Teh and its subsidiary to be its agents in respect of the implementation of the sale of the ore envisaged in the agreement as:

(a) Teh in agreeing to the terms contained in the letter dated 13 December had acted on behalf of MT;

(b) all the steps taken by Teh or MT's subsidiary Nara in respect of the Nagashima and the Yuman Maru were on behalf of MT;

(c) the opening of letters of credit in favour of Nara indicated that it was an agent of MT and accepted by MT and

(d) the two shipments were pursuant to the agreement and any shortcomings in respect thereof were liabilities of MT.

[3] The loss and damage caused by the non-payment of the instalments and of the accrued interest and the losses incurred through the quality claims by Mitsui and by demurrage incurred or imposed were all covered by the wide indemnity clause in the letter of guarantee. **[4]** The plaintiff was not negligent in allowing the contractor to draw up to 85% of the contractor's estimate of the value of the shipments. This was anticipated in the original agreement to be entered as a supplement to the original loan agreement.In any event a 15% allowance for over estimation did not seem unreasonable.

[5] The money lent was for the purposes of the plaintiff's *bona fide* mining business and as such was not caught by the Moneylenders Act 1951.

[6] The plaintiffs have failed to prove that the loan to T was in fact a loan to MT or that they were entitled to treat it as a loan to MT.

[7] The probabilities are that the penalty charged by Mitsui were agreed upon by all the parties as there was no protest by MT.

In any event that is what is imposed by Mitsui and such imposition is covered by the indemnity given by the defendants.

[8] Interest claimed in respect of the loan and the quality or penalty claims is at the statutory interest rates that the Court is empowered in its discretion to award.

[Order accordingly.]

For the plaintiffs - C.V. Das (Yeo Puay Huei with him); M/s. Shook Lin & Bok
For the 1st defendant - Yeoh Kian Teik; M/s. Yeoh Kian Teik & Co.
For the 2nd, 3rd & 5th defendants - Yeoh Lam Cheng; M/s. Yeoh Kian Teik & Co.
For the 4th defendant - Guy Varegheese; M/s. Richard Ho.

JUDGMENT

VC George J:

Ma-Thai Mining Corp. (M) Sdn. Bhd. (Ma-Thai) had been, through a subsidiary company called Nara Mining Corp. Ltd., mining for manganese ore in Narathivas in South Thailand. The actual extraction of the ore was carried out by a contractor named Teddy Lim Cheng Ho employed by Ma-Thai. These were some of the facts set out in the preamble to a written contract entered into between Ma-Thai and the plaintiffs pursuant to which contract the plaintiffs lent Ma-Thai RM180,000 to enable Ma-Thai to purchase certain machinery to be used to extract the manganese ore at Narathivas.

In consideration for the loan Ma-Thai agreed that all ore mined at the mine at Narathivas, if it was of a quality acceptable to the plaintiffs, would be sold to or through the plaintiffs at such prices as may be mutually agreed upon and in the absence of agreement at the prevailing market price. It was also agreed that the loan would be repaid by monthly instalments of RM15,000 or by deductions to be made from the purchase price of the ore sold to or through the plaintiffs. Ma-Thai also agreed to pay interest on the loan. By Clause 2 of the written

contract Ma-Thai warranted "that they are fully and legally entitled to all ore won from the said mine and to dispose the same notwithstanding the interest of the said subsidiary company and of the said Teddy Lim Cheng Hoe."

Attached to the said written contract was a document entitled "guarantee" which had been executed by each of the defendants simultaneously with the execution of the said written contract by which they and each of them jointly and severally undertook to indemnify the plaintiffs against "all losses damages costs expenses or otherwise" that may be incurred by the plaintiffs by reason of any default on the part of Ma-Thai "in performing and observing their obligations or covenants under the said written contract.

The plaintiffs' claim is in respect of such alleged losses and damages and is brought against the defendants as guarantors and is based on the indemnity given by the said guarantee.

At all relevant times the 1st to the 5th defendants were directors of Ma-Thai and also of Nara Mining Corp. Ltd. The 6th defendant is the contractor referred to in the said written agreement between the plaintiffs and Ma-Thai.

In or about July 1969 the first consignment of manganese ore from the mine at Narathivas of 2898 tons was shipped on the vessel "*Ta-Peng*". An amount of RM14,915.28 as the proceeds of the sale of the consignment was credited by the plaintiffs to the Ma-Thai account on 31 July 1969. On 31 December 1969 an amount of RM15,743.70 was similarly credited as being the proceeds of sale of the 3,087 tons of manganese ore earlier shipped on the "*Niels Maersk*". It is not disputed that these two shipments were effected by the 6th defendant Teddy Lim. In or about December 1969 Teddy Lim as "contractor" was replaced by the 4th defendant Teh Hing Chong.

On 3 December 1969 the plaintiffs wrote a letter (Exh. 2PB1) to Mr. Teh Hing Chong, director, Nara Mining Corp. Ltd. c/o 57, Market Street, Ipoh "referring to manganese ore at Nara Mining" and setting out the terms and conditions of the sale of a further 6500 tons of manganese ore. This letter was referred to in the testimony by Mr. Goon Kong Ming (also known as G.K. Ming) called by the plaintiffs as their first witness, who at all relevant times had been a director of the plaintiff company and the manager of its Ores Division. He said that the first letter was written pursuant to the said written contract with Ma-Thai and was addressed to Mr. Teh Hing Chong because he was at the relevant time the person in charge of the mining operations at Narathivas having taken over the operations from Teddy Lim Cheng Ho. He also testified that the terms and conditions set out in the said letter were in respect of the 6500 tons referred to in the said letter as well as in respect of any other sales to be made subsequently.

The manganese ore to be supplied pursuant to the terms and conditions set out in the said letter of 3 December 1969 was sold by the plaintiffs to Mitsui & Co. of Japan who arranged for the ore to be shipped from Narathivas to Japan. One shipment was on the "*Yunan Maru*" on 21 April 1970 and another on the "*Nagashima Maru*" on 3 July 1970.

Now, by the said letter of 3 December 1969 the quality of the ore was specified. *Inter alia* it was agreed that a minimum 46% of the contents of the ore should be manganese. The maximum content of impurities allowable in the ore was also specified. For example, not more than 4% could be iron, not more than 14% silica and so on. The price was fixed at US$19.50 per dry metric ton FOBT Narathivas based on manganese content of 48%, the price to be adjusted by US$0.40 for 1% manganese content above or below 48% "fractions to count prorata". As to impurities, deviations from the maximum allowed was to attract penalties at

rates to be mutually agreed. There was to be a provisional weighing and analysis of the shipment followed by a final determination of weight and quality by Nippon Kaiji Kentei Kyokai whose findings were to be accepted as final.

The seller was to be paid by letter of credit (LC), initially of 85 % of the provisional invoice raised based on the provisional weight and quality and by a payment of any balance found due on the final determination of weight and quality analysis. If it was found that there had been any overpayment the seller was to remit the overpaid amounts to the plaintiffs on determination of the final weight and quality analysis.

In respect of the shipment of the manganese on the "*Yunan Maru*" Mr. Goon signing as a director of the plaintiff company wrote his letter of 26 March 1970 to Mr. Teh Hing Chong addressed to him as "Director Nara Mining Corp. Ltd., c/o 57 Market Street, Ipoh" requiring a confirmation that the manganese will meet the contract specifications with the plaintiff's buyers to have right of rejection or acceptance subject to penalty. This confirmation was given by Mr. Teh by his letter of 27 March 1970.

On 18 April 1970 which was, it is to be noted, just three days before the shipment on the "*Yunan Maru*" was effected, the plaintiffs had sent Ma-Thai a statement of the account between the parties showing a balance of RM181,948.97 as being due from Ma-Thai who replied by their letter dated 24 April 1970 signed by company secretary stating that their records show that the balance due from them to the plaintiffs to be only RM166,569.85. Attached to the letter was Ma-Thai's version of the statement of account showing *inter alia* the advance of RM180,000 particulars of accrued agreed interest on the loan, deductions made in respect of the shipment on the "*Ta-Peng*" and on the "*Niels Maersk*". This letter was followed up as it were, 4 days later on 28 April 1970 by a letter by Ma-Thai signed by Mr. Yeoh Kian Teik the 1st defendant in his capacity as one of its directors, requiring the plaintiffs to deduct from every shipment all interest due and a further amount from every shipment equivalent to RM3 per ton of manganese shipped towards repayment of the loan and "from the balance of LC on the last shipment RM16 per ton and credit same to our account". It is specially to be noted that this letter was copied by Mr. Yeoh to Mr. Teh Hing Chong and to Mr. Chin Wongpuvaruk of Narathivas.

There was a reply dated 2 May 1970 by the plaintiffs to the letter of 28 April 1970 where a reference was made (without any subsequent demur by Ma-Thai or any of the defendants) to the "*Yunan Maru*" shipment (21 April 1970)" as being a Ma-Thai shipment pursuant to the agreement of "3 December 1969" (corrected in Court by Mr. Goon to "13 December 1969") and that the terms of the LC in respect of the shipment could not be altered (to meet what was suggested by Mr. Yeoh). Mr. Goon in his evidence testified that LC had been established in favour of Nara Mining Corp. Ltd.

On 22 June 1970 the plaintiffs wrote to Mr. Teh Hing Chong informing him that Mitsui, the buyers of the manganese shipped on the "*Yunan Maru*", had complained about its quality. Later the certificate of inspection and analysis when received by the plaintiffs was also sent to Mr. Teh on 25 June 1970. On 24 June 1970 there had been a conversation between Mr. Goon and Mr. Yeoh Kian Teik confirmed by Ma-Thai's letter to the plaintiffs on 26 June 1970 confirming that a deduction of RM3 per ton should be made. By a letter dated 3 July 1970 from the plaintiffs to Mr. Yeoh copied to Ma-Thai it was confirmed that by a telephone conversation between Mr. Goon and Mr. Teh it had been agreed that certain deductions were to be made "to compensate" the overdrawing of US$7,468.40 in respect of the LC in respect of the "*Yunan Maru*" shipment.

A statement of account showing the position between Ma-Thai and the plaintiffs for the period 14 February 1969 to 30 June 1970 was sent to Ma-Thai on 14 July 1970. It shows credits given for the shipment on the *Ta-Peng, Niels Maersk* and the *Yunan Maru.* There was no protest in respect of this. However Ma-Thai had earlier queried the accounts showing Ma-Thai being debited in respect of two advances "by Mr. Teddy Lim" of RM15,000 on 8 May 1969 and RM30,000 on 20 May 1969.

In respect of the shipment on the "Nagashima Maru" again there was a complaint of poor quality. Again there certificates of the analysis. The plaintiffs referred these to Mr. Teh Hing Chong with copies to Ma-Thai. Penalties were imposed and the final calculation showed an overdrawing in respect of this shipment of US$7,661.38 which the plaintiffs claimed against Ma-Thai by sending its letter of 28 October 1970 to Mr. Teh Hing Hong copied to Ma-Thai. There was an error in the calculation in respect of the shipment on the "*Yunan Maru"* which was corrected by the plaintiffs' letter to Mr. Teh Hing Chong again copied to Ma-Thai.

The amounts deemed by the plaintiffs to be overdrawn based on the quality claims by Mitsui in respect of both of shipments and a further amount of US$1330.35 shown to have been incurred by way of demurrage were debited to the account of Ma-Thai with the plaintiffs. On the other hand credit was given for the proceeds in respect of the ore shipped on the "*Yunan Maru"* and the "*Nagashima Maru"*. A full statement of account dated 12 March 1971 was sent to Ma-Thai which included the advances "by Mr. Teddy Lim" of RM45,000 and a credit entry of a payment of RM30,000 "from Teddy Lim" to show a balance due as at 28 February 1971 from Ma-Thai to the plaintiffs of RM201,003.34.

Some four months later, by a letter dated 16 August 1971, Ma-Thai themselves informed the plaintiffs that Ma-Thai's books showed that it owed the plaintiffs as at 30 June 1971 RM207,806.47. They required the plaintiffs to confirm that this was correct which the plaintiffs did by letter dated 1 September 1971.

Particularly in this context it should be noted that the plaintiffs' solicitors had earlier sent two letters of demand on each of the director of Ma-Thai and on Mr. Teddy Lim, in their capacity as guarantors, one dated 23 November 1970 and the other dated 21 December 1970, in each case demanding payment of RM125,212.06 as being then due under the guarantee. There was no reply to each of those letters from any of the director guarantors or from Mr. Teddy Lim. But no payment was made. Mr. Goon's evidence was that up to the time that the action was filed, neither Ma-Thai nor any of the guarantors had disputed the accounts. And months after the plaintiffs' solicitors' said letters of demand were sent came the revelation by Ma-Thai's said letter of 16 August 1971 of the state of the books of Ma-Thai's *vis-a-vis* the account with the plaintiffs.

The amount demanded for by the solicitors did not include the amounts that the plaintiffs say they had incurred as a result of the quality claims made in respect of the last two shipments by the buyer Mitsui and the amount incurred as demurrage. In suing the defendants as guarantors for the plaintiffs it was pointed out that they had undertaken to indemnify the plaintiffs "against all losses damages costs and expenses or otherwise which may be incurred by them by reason of any default on the part of the miners (that is Ma-Thai) in performing and observing their obligations or covenants under the foregoing agreement". The plaintiffs seek judgment not only for the balance of the RM180,000 lent and interest accrued thereon but also for an amount of RM15,000 said to be the balance of the amount advanced to Teddy Lim Cheng Hoe as well as for the amounts found to have been overdrawn in respect of the last two shipments as a result of the quality claims made by Mitsui and they also claim the amounts incurred or imposed by way of demurrage.

As has been seen, the loan agreement provides *inter alia* that all the ore mined at Nara Mining Corp. Ltd.'s mine at Narathivas by the contractor shall be sold to or through the plaintiffs and it should be emphasised, **at prices to be agreed**. Also the ore must be of a **quality acceptable** to the plaintiffs.

Clearly it was the intention of the parties to the agreement that there would be further agreement in respect of price as well as quality of the ore. After the initial two shipments the plaintiffs prepared a further document being the said letter dated 3 December 1969 from the plaintiffs addressed to Mr. Teh Hing Chong, director Nara Mining Corp. Ltd. purporting, as has been seen, to confirm agreement having been arrived at in respect of *inter alia* price, quality and how it was to be determined, method of payment, and the loading rate. Mr. Teh endorsed this document at its foot thereby clearly indicating the acceptance of the terms.

It was attempted in Court to make something of the fact that that document was addressed to Mr. Teh Hing Chong and not to Ma-Thai. The contention was that as that document and various other documents were written by the plaintiffs to Mr. Teh and as the LC's were opened in favour of Nara Mining Corp. Ltd. and not in favour of Ma-Thai, the transactions *vis-a-vis* the last two shipments were pursuant to some contract not connected to the loan agreement of 13 February 1969 between Ma-Thai and the plaintiffs.

In the face *inter alia* of the recognition given in the loan agreement itself of Nara Mining Corp. Ltd.'s role in respect of the contract, of the sending of copies to Ma-Thai of the more important correspondence sent to Teh or Nara Mining Corp. Ltd., of the manner in which the accounts were kept and of the fact that statements thereof were sent from time to time to Ma-Thai, of the absence of any protest by Ma-Thai or any of its directors and noting that there was even an admission in respect of the state of the accounts between Ma-Thai and the plaintiffs by Ma-Thai's letter of 16 August 1971 and in the face of the important letter of 28 April 1970 signed by Mr. Yeoh Kian Teik as director of Ma-Thai copied to Mr. Teh Hing Chong which in my judgment demonstrates that Mr. Yeoh (and through him Ma-Thai) at that stage, a few days after the shipment on the "*Yunan Maru*" had been effected, recognised that the arrangements as a result of the agreement of 13 February 1969 were still on-going and that Mr. Teh Hing Chong was playing so special a role in respect thereof that copies of the letter authorising the deduction to be made were sent to him and also to Narathivas demonstrates beyond any *bona fide* argument that all the steps and actions taken by Teh Hing Chong were on behalf of Ma-Thai and in performance of the obligations of Ma-Thai agreed to in the agreement of 13 February 1969. The plaintiffs reply of 2 May 1971 which has been looked at earlier and to which there was no rejoinder, takes the matter beyond the pale of argument.

Ma-Thai perforce had to act by agents. This was anticipated in the agreement of 13 February 1969. It is my judgment that by conduct Ma-Thai had held out Teh and Nara Mining Corp. Ltd. to be its agents in respect of the implementation of the sale of the ore envisaged in the loan agreement. I find as a fact that Teh Hing Chong in agreeing to the terms contained in the document of 3 December 1969 acted on behalf of Ma-Thai. I also find as a fact that all steps taken by Teh or Nara Mining Corp. Ltd.. in respect of the two shipments on the "*Yunan Maru*" were on behalf of Ma-Thai. I hold that the opening of LCs in favour of Nara Mining Corp. Ltd. were in its favour as agents of Ma-Thai and accepted as such by Ma-Thai. I hold that these two shipments were pursuant to the agreement of 13 February 1969 and any shortcomings in respect thereof were liabilities of Ma-Thai.

The agreement also provided for the loan to be repaired in monthly instalments of RM15,000 or by the deduction of the purchase price of ore sold at the rate of RM3 per ton. Until the loan was repaid Ma-Thai was to pay interest on a monthly basis on the outstanding balance at one percent above rates charged by banks on unsecured loans. The plaintiffs had initially charged interest rate at 9% p.a. and in Ma-Thai's books they too had debited themselves in respect of interest at 9% up to March 1970.

Any breach of the obligation to reduce the loan in the terms agreed and any breach in respect of payments agreed to be paid pursuant to the agreement of 3 December 1969 would in my judgment amount to be breaches of the obligations of Ma-Thai set out in the initial loan agreement. I could find nothing in the guarantee or elsewhere that supported Mr. Yeoh Kian Teik's contention that the guarantors would only be liable on rejection of the ore by the plaintiffs or its buyers. The loss or damages cause by the non-payment of the instalments and of the accrued interest and the losses incurred through the quality claims by Mitsui and by demurrage incurred or imposed, are all in my judgment covered by the wide indemnity clause in the letter of guarantee the terms of which have been looked at earlier in this judgment.

Encik Yeoh Lam Cheng had *inter alia* submitted that the plaintiffs had been negligent in allowing the contractor to draw up to 85% of the contractor's estimate of the value of the shipments. That was the contractual arrangement which I have found was arrived at between Mr. Teh Hing Chong as agent of Ma-Thai and the plaintiffs and which was anticipated in the original agreement to be entered as a supplement to the original loan agreement. In any event a 15% allowance for over-estimation seems to me to be not unreasonable. This argument based on negligence has to be and is rejected.

There was a submission that the transaction is caught up by the Moneylenders Act, the money lent was for the purposes of the plaintiffs' *bona fide* mining business and as such is not caught by the Moneylenders Act, 1951 - see former s. 2(c) and current s. 2A(1) of the Act.

Another submission was that the loan of RM45,000 to Teddy Lim amounted to a variation that pursuant to s. 86 of the Contracts Act discharges the guarantors. Here the defendants blow hot and cold in that they also contended that the loan was a private arrangement between Teddy Lim and the plaintiffs and had nothing to do with Ma-Thai. If that in fact was the case then that loan to Teddy Lim cannot be said to be a variation of the contract between the plaintiffs and Ma-Thai. It is relevant at this stage then to consider the position of the advance made to Teddy Lim and in doing so I have to and do conclude that the plaintiffs have failed to prove that the loan to Teddy Lim was in fact a loan to Ma-Thai or that they were entitled to treat it as a loan to Ma-Thai.

Teddy Lim himself has accepted that he was personally liable for the loan. In fact he had personally repaid a substantial part of it and had arranged for his successor, as contractor at the mine, to accept liability for the balance of RM15,000. That the initial advance to Teddy Lim was made before the telephone conversation that Mr. Goon had with Dr. Ng Mann Loke is consistent with Dr. Ng's testimony that in respect of the second advance too he was simply acting as agent of Teddy Lim passing a message to Mr. Goon. It is also relevant to note that Ma-Thai in fact had in effect protested - the only protest by them - the inclusion of the advance to Teddy Lim in the statement of accounts, as soon as they were aware of that having been done, by their letter of 24 April 1970 to the plaintiffs.

I have already dealt with the issue of whether the quality claim is covered by the indemnity given by the guarantors in the guarantee and have found that it does. The quantum of the quality claim and the demurrage charged were challenged. That challenge was met by the comprehensive and clear submissions of Ms. Yeo Puay Huei, a full note of which was taken by me in the notes of the proceedings. Ms. Yeo had backed each of her contentions by reference to the relevant documents as can be seen in my notes. The only exception was in respect of the 80 cents penalty imposed by Mitsui in respect of percentages below 46% in respect of the manganese content. This rate was imposed by Mitsui on the plaintiffs and the plaintiffs in turn imposed it on Ma-Thai without any protest. I agree with Ms. Yeo that the probabilities are that the penalty at that rate was agreed upon by all parties concerned which is why even Ma-Thai did not lodge any protest. In any event that is what Mitsui imposed on the plaintiffs and such imposition is in my judgment covered by the indemnity given by the defendants.

In my judgment Ms. Yeo's submission is a complete answer to the challenge in respect of the quality claim including demurrage and also in respect of the contention by the defendants that in fact the plaintiffs had not suffered any loss. I agree with the calculations, noted in the notes of proceedings, by which Ms. Yeo demonstrated that in respect of the "*Yunan Maru*" the loss to the plaintiffs was US$11,143.85 and in respect of the "*Nagashima Maru*" US$9,611.42. However the plaintiffs are not claiming loss of profits but only seek to be reimbursed in respect of the penalties imposed on them because of the poor quality of the ore and because of the demurrage imposed.

There was some arguments advanced in respect of the interest claimed. Encik C.V. Das of Counsel for the plaintiffs pointed out that Clause 1(iv) of the main agreement provides for interest at 1% above usual bank rates and that the RM201,003.34 does not include any interest of the quality or penalty claims which he concedes does not contractually attract interest. Interest claimed in respect of those claims is at the statutory interest rates that the Court is empowered in its discretion to award. In respect of the loan, as has already been seen, both the plaintiffs and Ma-Thai had computed interest initially at 9% p.a. and later at 10% p.a. as being 1% above the usual bank rates provided for in the contract. What the rate was after 28 February 1971 was not made clear to the Court.

In respect of the claim for repayment of the amounts advanced and interest it was contended that the plaintiffs have not proved the quantum in that the ledgers of the plaintiff were not produced and its bookkeeper was not called. *Inter alia* the correspondence and the statement of accounts produced together with the admissions of the state of the accounts by Ma-Thai including by its balance sheet exhibited as IPB95, were in my judgment more than sufficient to prove and has proven this aspect of the claim of the plaintiffs.

There will be judgment for the plaintiffs against each of the defendants jointly and severally, in the amount of RM127,314 being the balance (in respect of what is claimed in respect of the loan) as at 1 January 1971 which should be added interest for January 1971 and February 1971 being RM1,081.30 and RM968.83 respectively (see p. 37 of the bundle of pleadings) less the RM15,000 advanced to Teddy Lim and less any interest which may have been computed on the basis of the RM45,000 advanced to Teddy Lim as being an advance to Ma-Thai. Although what the rate of interest should be after 28 December 1971 is not clear, I use the discretion vested in me to direct that the defendants will pay further interest on the amounts arrived at after the said deductions, at 6% p.a. computed from 1 March 1971 until realisation.

There will also be judgment for the plaintiffs against each of the defendants jointly and severally in respect of the quality claims including demurrage in the sum of RM71,639.22. No demand had been made on the guarantors for this amount other than by the writ itself. And before the writ was amended on 29 April 1982 interest sought was at 6% p.a. and only for the period after judgment. Again exercising the discretionary powers vested in me I direct that there will be interest on the RM471,639.22 at 6% p.a. from 29 April 1982 until realisation. The defendants will also pay the costs of and incidental to this suit.

Also found at [1992] 1 CLJ 422